

2021 APAAC Annual Administrative Professional Conference

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ETHICS & HUMANITY: THE CO-EXISTENCE OF PROSECUTORIAL DUTY & HUMAN BIAS

Presented by:

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ELIZABETH BURTON ORTIZ
EXECUTIVE DIRECTOR

BEFORE WE GET STARTED ...



POLL EVERYWHERE SIGN IN

TEXT: Elizabethini492

TEXT TO: 22333



Poll Everywhere

Do you have a favorite restaurant?

Yes

No

Any restaurant is
better than my cooking

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**ETHICS & HUMANITY:
THE CO-EXISTENCE
OF
PROSECUTORIAL DUTY
&
HUMAN BIAS**

Elizabeth Burton Ortiz

Executive Director

Arizona Prosecuting Attorneys' Advisory Council

August 6, 2021

LEGAL DISCLAIMER ... I'M NOT A PSYCHOLOGIST



POTENTIAL IMPACT OF BIAS ON PROSECUTORIAL DUTY



BIAS

- **An inclination of temperament or outlook; especially : a personal and sometimes unreasoned judgment : prejudice**

- [Bias | Definition of Bias by Merriam-Webster \(merriam-webster.com\)](https://www.merriam-webster.com/dictionary/bias)

Is bias inherently bad?

Yes

No

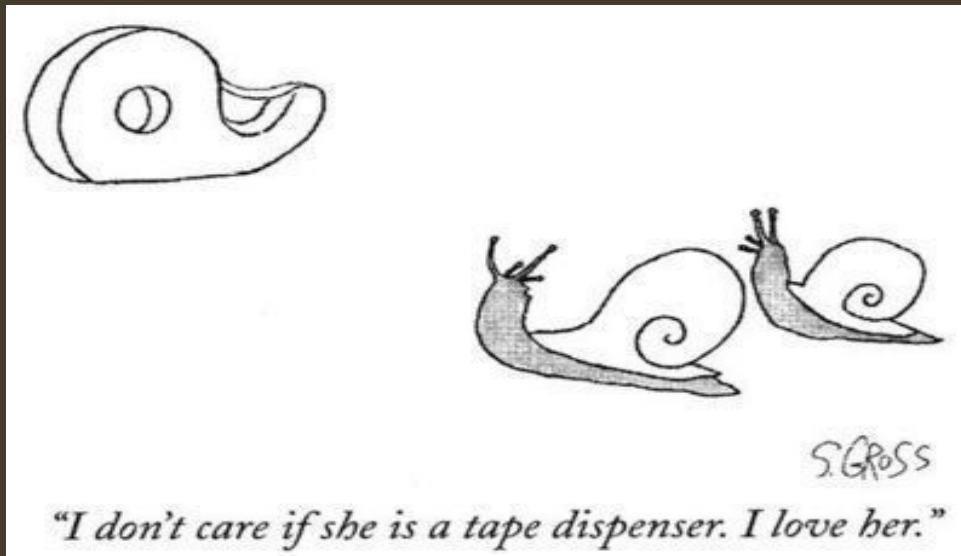
Only if it is different
than what I believe

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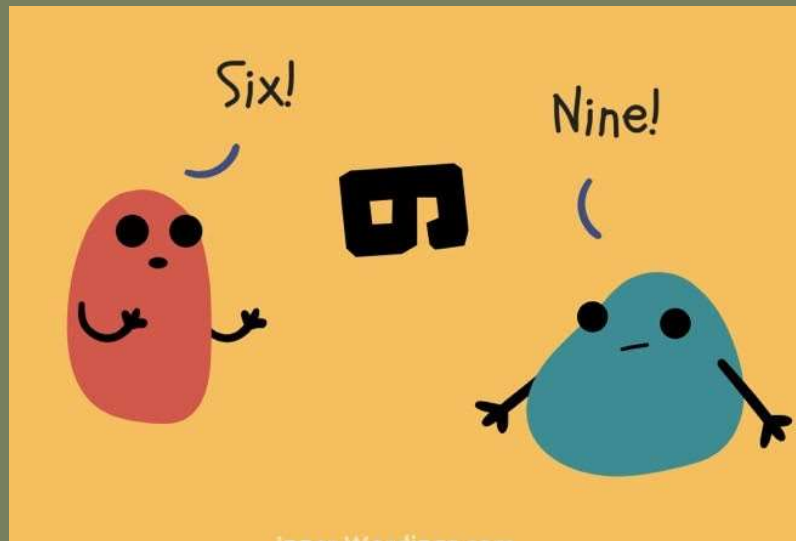
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SIMILARITY BIAS



EXPERIENCE BIAS



DISTANCE BIAS



SAFETY BIAS



CONFIRMATION BIAS



WASON RULE DISCOVERY TEST

Confirmation Bias and the Wason Rule Discovery Test
(explorable.com)



TYPES OF CONFIRMATION BIAS

- **Biased Information Search**
- **Biased Interpretation of Data**
- **Biased Memory**



**FACT: PRIUS OWNERS ARE THE SAFEST, MOST
COURTEOUS DRIVERS**



YOUR FAVORITE RESTAURANT



IMPLICIT BIAS



IMPLICIT VS. EXPLICIT BIAS

- Implicit Bias

- Attitudes & stereotypes
- Outside our consciousness
- Do not necessarily align with our declared beliefs

- Explicit Bias

- Attitudes & beliefs
- Recognized on a conscious level
- Often direct result of perceived threat

IMPLICIT ASSOCIATION TEST

Implicit Association Test (IAT) | Harvard Diversity, Inclusion & Belonging

HAVE YOU EVER ...







POLL EVERYWHERE SIGN IN

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Poll Everywhere

What does this bumper sticker tell you about the driver?



The driver is strongly against impaired driving

The driver is careful in operating a motor vehicle

Both A and B

None of the above. Who knows if the driver even put the bumper sticker on the car?

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What does this bumper sticker tell you about the driver?



The driver is strongly against law enforcement

The driver does not care about following traffic laws

Both A and B

None of the above. Who knows if the driver even put the bumper sticker on the car?

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What does this bumper sticker tell you about the driver?



The driver is a scientist **A**

The driver is making a political statement **B**

Both A and B **C**

None of the above. Who knows if the driver even put the bumper sticker on the car? **D**

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OVERARCHING DUTY TO BE MINISTER OF JUSTICE



DOES HUMAN BIAS IMPACT
PROSECUTORIAL DUTY?



**BIAS CAN BE ANYWHERE ...
*EVEN IN MAYBERRY***







SAM BECKER

- **Quiet / keeps to himself**
- **Will not look you in the eye**
- **No one in town knows where he came from**
- **Always in a hurry**
- **Facial characteristics of a criminal**
- **Bought large quantities of absorbent cotton, tranquilizers, vitamins, antiseptic, & swab sticks**

CONFIRMATION BIAS?



Based on this information, Barney Fife's suspicions regarding Sam Becker:

Rise to the level of probable cause that there is “somebody with a bullet in him”

Merit further investigation

Are nothing more than conjecture

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GATEKEEPERS TO THE CRIMINAL JUSTICE SYSTEM





POTENTIAL IMPACT OF BIAS ON INVESTIGATION

Investigator doesn't believe the victim

Communicates this suspicion to the victim



"See, I knew it was a false report!"

Victim withdraws and/or becomes non-cooperative

**REASONABLE MINDS CAN DIFFER
... THE GOAL IS TO ENSURE FAIR
ASSESSMENT**



Words Matter

“[W]ith certain crimes . . . a close look shows us how the misuse of language can saddle the successful prosecution of offenders by laying partial blame on victims for the crime itself or by painting an inaccurate picture of rape as a consensual sexual act.”

“The Language of Sex,” by Anne Munch, J.D.

http://www.annemunch.org/Language%20of%20Sex%20Volume_4%20-%20Issue_4.pdf

BIAS IMPACTS VICTIMS TOO

- Self blaming
- Guilt for impact on offender
- Embarrassment regarding personal life becoming public
- Uncooperative
- Incomplete information
- Not asserting victim rights

EVERYDAY TIPS FOR EXTRAORDINARY PUBLIC SERVANTS

- Recognize that to be human is to be susceptible to bias
 - Set stakeholder expectations
- Recognize the impact of even seemingly innocuous decisions
 - Focus on identifying concrete factors, not your gut feeling
 - Assume a contrary perspective

MORE TIPS ...

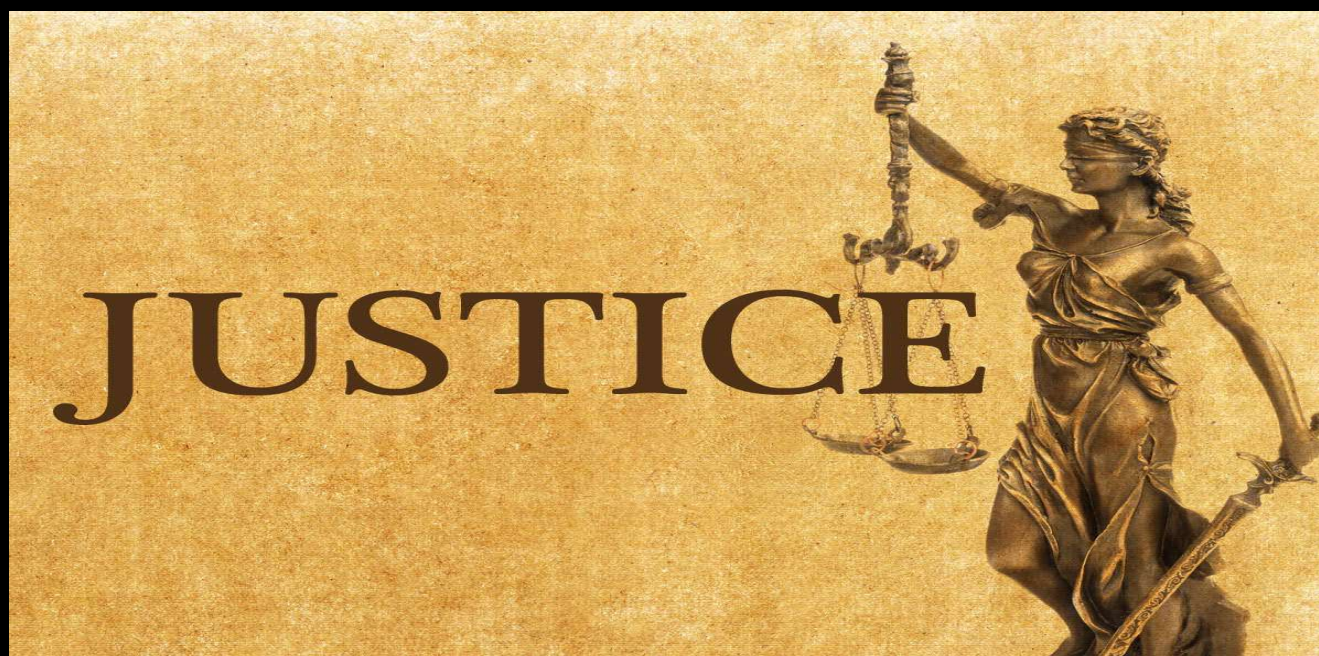
- **Consider all evidence with an open mind – even after you have formed your initial opinion**
 - **Be receptive & open to criticism**
 - **Seek out diverse & different perspectives**
- **Cast a wide net when doing research & gathering data**
 - **Ask what it would take to prove you wrong**

BACK TO MAYBERRY ...

WHAT ADDITIONAL INFORMATION
WOULD IT TAKE TO CHANGE BARNEY'S
OPINION ABOUT SAM BECKER?



THANK YOU FOR BEING A MINISTER OF JUSTICE



CONTACT INFORMATION

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